

Executive Registry

76-5077/4

25X

8 DEC 1976

MEMORANDUM FOR THE RECORD

SUBJECT: Proposal to Establish a Review Panel to
Consider Appearances in Court of
CIA Employees

REF: [] dated 24 November 1976
titled "Proposal to Establish a Panel to
Consider Appearances in Court of
CIA Employees"

On 8 December 1976 Mr. Knoche, DDCI, Mr. Lapham, OGC,
[] A/DDCI and Mr. Shackley, ADDO, met in order to
consider the proposal outlined in Reference. At the end of the
deliberations the following decisions were made:

- a. The DDCI wanted to play an active role in making policy-type judgments on the basic issue of which CIA officers would appear in what court cases that involve CIA equities.
- b. The DDCI did not want to establish a Review Panel as proposed in Reference.
- c. The DDCI preferred to handle the arbitration of issues between the DDO and OGC on an as required basis rather than through a panel with the understanding that he would be readily available to hear argumentation on issues that could not be resolved by mutual agreement between the DDO and OGC.

[]
Theodore G. Shackley

Associate Deputy Director for Operations

Distribution:

- 1 - DDCI
- 1 - DDO
- 1 - ADDO
- 1 - OGC
- 1 - A/DDCI
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Executive Registry

76-5077/2

Form 163
8-66

ATTACHMENT

25X

24 NOV 1976

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : Theodore G. Shackley
Acting Deputy Director for Operations

SUBJECT : Proposal to Establish a Review Panel to
Consider Appearances in Court of CIA
Employees

1. We are receiving an increasing number of requests from various legal jurisdictions which request that CIA personnel appear in court. As a rule, these cases are adjudicated between the DDO and OGC, in accordance with the informal guidelines providing that where possible an employee from OGC or the Office of Personnel make the requested court appearance. Under these guidelines, only in exceptional circumstances would a DDO officer under cover give the testimony. However, because of the increased number of requests, we believe that establishment of a formal mechanism as described below in paragraph two should be considered.

2. Proposal - It is proposed that a new panel be created to deal with this problem, chaired by the DDCI and consisting of the General Counsel and the DDO as regular members. Representatives from other components would attend if their personnel were involved. Prior to a meeting of the panel, procedures would be established under which a formal memorandum would be prepared for its consideration outlining the proposed nature of the testimony requested and the relative advantages and disadvantages from the Agency point of view as to whether the employee should testify.

Theodore G. Shackley

cc: OGC

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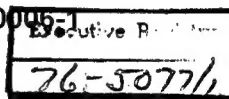
cc: OGC

SECRET

X1 SA/ADD0/[] (22 Oct 76)

Distribution:

- Orig & 1 - addressee
- 1 - OGC
- 1 - Exec Reg
- 1 - DDO Reg
- 1 - SA/ADD0 Chrono



27 August 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Policy Issue Concerning Appearance of Agency
Personnel as Witnesses for Department of Justice

1. The issues presented in Ted Shackley's paper to you on this subject are of major importance. I want you to have my views.

2. On Ted's basic point, I am in complete agreement. Undoubtedly it is vital to the Agency and to the Operations Directorate that we take every appropriate step to protect sources and to develop and maintain credibility with sources, prospective sources, and foreign services. But I think the rule recommended by the DDO for adoption by you as Agency policy is stated in terms too nearly absolute to be realistic or workable.

3. The paper, in the opening sentence, addresses itself to the matter of Agency witnesses appearing in trials "in which there is no significant Agency equity." It is proposed, with respect to such trials, that DDO personnel be exempted as a matter of policy from testifying "when this is possible," and that a procedure be established for ad hoc considerations "of the total Agency equity in sending representatives from other parts of the Agency to testify in court cases as required by the Justice Department."

4. The presence or absence of Agency equity in a prospective trial, and the question of the significance of any such equity, as well as the total equities of the Government, are factors which develop and become known as matters concerning the trial and preparation for it progresses within the Department of Justice, the Agency, and the Government. Generally, it is only as more and more information is developed and made known to those having a responsibility for it that it is possible to determine the fact of any Agency equity and the significance of any equity. Additionally, only as such matters progress is it possible to determine what Agency individuals if any

would be desired or needed in a trial, and thus to determine whether the Agency's and the Government's interests warrant paying the price of making the individual available as a witness.

5. I believe the matter is not set out in perhaps those terms in any Agency regulation or policy, but I think that in practice Agency participation in trials and Agency determinations as to the extent to which its people have been permitted or required to appear in trials have reflected the statements above. I believe also that, in practice, that is the way matters almost have to proceed and, therefore, I think it would be highly undesirable to establish a formal mechanism in the form of a committee to give the ad hoc consideration which would lead to Agency decisions concerning the availability of Agency personnel as witnesses. As an alternative, I would propose that, as to each case, my Office and I would work closely with the responsible Agency components, on an ascending echelon level as appropriate, and reach agreement, in each case, with the responsible officials. In the event of disagreement on any case, the matter would be referred for decision to Mr. Knoche or to you.



Anthony A. Lapham

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Distribution:

Original - Addressee

1 - DDCI

☒ - ER via Exec Secy

1 - DDO

1 - DDA

1 - OGC

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Acting DDO

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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ROUTING AND RECORD SHEET

76-5904
 10-24-76

SUBJECT: (Optional)

FROM: Acting DDO

EXTENSION

NO.

DATE

26 October 1976

25X

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DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OGC

FOR CONCURRENCE

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Acting DDO

FOR SIGNATURE

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DDCI

Hank:

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I entirely agree with Ted that there is an ever-increasing call on the Agency and the DDO to participate in one way or another in litigation and I agree also that this represents a real problem. But I think that situations involving requests for testimony by Agency witnesses vary so much from case to case, and from one stage to another in any given case, that the establishment of a formal committee to consider each such situation would be unnecessary and unwise. I see no reason why, without creating another committee, the questions that arise cannot simply be referred to you in those situations, hopefully a minority of the total, in which OGC is either in disagreement with the component, whether DDO or any other, as to the need for an appearance by an Agency witness, or in which, notwithstanding agreement by OGC and the component, the case is obviously of such importance as to warrant your attention.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Proposal to Establish a Review Panel to Consider
Appearances in Court of CIA Employees

EL 5727/4

FROM:

ADDO
7 E 26

EXTENSION:

NO.

DATE

8 December 1976

25X

TO: (Officer designation, room number, and building)

DATE

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDCI				
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